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**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH DOUGLAS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0608-CR-692
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0602-CM-32083

March 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Kenneth Douglas appeals his conviction for Operating a Vehicle While Intoxicated, as a Class A misdemeanor, following a bench trial. He presents a single issue for our review, namely, whether there was reasonable suspicion to permit a police officer to conduct a Terry stop.

We affirm.

FACTS AND PROCEDURAL HISTORY

At 9:40 p.m. on February 21, 2006, Indianapolis Police Officer Jason Zotz responded to a dispatch regarding a security guard's request for assistance at Community Spirits liquor store at 25th Street and Martin Luther King, Jr. Boulevard in Indianapolis. When Officer Zotz arrived at that location, he observed the driver of a green Pontiac Grand Prix, Douglas, backing up in the direction of the security guard. The security guard had one hand on the trunk of the car, and he used the other hand to signal to Officer Zotz that he needed his help. Accordingly, Officer Zotz drove his patrol car to a position directly behind Douglas' car and parked.

Officer Zotz then exited his patrol car, approached Douglas, and requested that Douglas exit his car. Officer Zotz observed that Douglas' eyes were bloodshot and he smelled alcohol on Douglas' breath. Douglas did not respond to three requests to exit his car. At that point, Officer Zotz forcefully removed Douglas from his car and placed him in handcuffs. A subsequent blood test showed that Douglas had a BAC level of .26%.

The State charged Douglas with operating a vehicle while intoxicated and public intoxication. At the bench trial, Douglas moved to suppress the evidence obtained after

his arrest. Douglas argued that Officer Zotz did not have reasonable suspicion to detain him. The trial court denied that motion. At the conclusion of trial, the trial court entered a judgment of conviction on the operating a vehicle while intoxicated charge and sentenced Douglas accordingly. This appeal ensued.

DISCUSSION AND DECISION

Douglas contends that the trial court erred when it denied his motion to suppress evidence. In particular, he maintains that he was illegally seized and that the evidence of his intoxication should have been excluded at trial. Although he originally challenged the admission of the evidence through a motion to suppress, Douglas appeals following a completed trial and challenges the admission of such evidence at trial. “Thus, the issue is . . . appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial.” Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). We have indicated that our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), trans. denied. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling. Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), trans. denied. However, we must also consider the uncontested evidence favorable to the defendant. See id.

Douglas first contends that Officer Zotz’s seizure of him violated his rights under the Fourth Amendment to the United States Constitution, which provides, in pertinent part: “[t]he right of people to be secure in their persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated” U.S. CONST. amend. IV. The Fourth Amendment’s protection against unreasonable searches and seizures has been extended to the States through the Fourteenth Amendment. See Berry v. State, 704 N.E.2d 462, 464-65 (Ind. 1998). The Fourth Amendment prohibits unreasonable searches and seizures by the government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. Moultry v. State, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004). However, a police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity “may be afoot.” Id. at 170-71 (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)).

Reasonable suspicion is a “‘somewhat abstract’” concept, not readily reduced to “‘a neat set of legal rules.’” Id. at 171 (quoting United States v. Arvizu, 534 U.S. 266, 274 (2002)). “When making a reasonable suspicion determination, reviewing courts examine the ‘totality of the circumstances’ of the case to see whether the detaining officer had a ‘particularized and objective basis’ for suspecting legal wrongdoing.” Id. (quoting Arvizu, 534 U.S. at 273). The reasonable suspicion requirement is met where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur. Id. It is well settled that reasonable suspicion must be comprised of more

than an officer's general "'hunches'" or unparticularized suspicions. Webb v. State, 714 N.E.2d 787, 788 (Ind. Ct. App. 1999) (quoting Terry, 392 U.S. at 27).

Here, at the suppression hearing, Officer Zotz testified that, at the time he stopped Douglas' car, he had observed Douglas driving in the direction of the security guard while the guard was yelling at Douglas to stop. In addition, the security guard was waving and yelling at Officer Zotz "to come over and help him." Transcript at 11. Officer Zotz could have reasonably concluded that Douglas was "trying to back over" the security guard, a criminal act. Id. Given the totality of the circumstances, the evidence supports a finding of reasonable suspicion to initiate an investigatory stop.¹ Once Officer Zotz initiated the stop, he obtained probable cause that Douglas had been operating his vehicle while intoxicated, given the odor of alcohol on his breath, bloodshot eyes, and erratic driving. See Frensemeier v. State, 849 N.E.2d 157, 162 (Ind. Ct. App. 2006) (noting the amount of evidence needed to supply probable cause of operating while intoxicated is minimal; we have held that noticing the odor of alcohol on the driver's breath during the course of an accident investigation can be sufficient), trans. denied. We conclude that the trial court did not abuse its discretion when it admitted evidence of Douglas' intoxication at trial.

Douglas also challenges the seizure under the Article I, Section 11 of the Indiana Constitution. Regarding such a claim, our supreme court has "explained reasonableness

¹ Douglas does not make any specific contention that his placement in handcuffs violated his constitutional rights. Regardless, this court has cited with approval the Seventh Circuit Court of Appeals' holding that "the mere use of handcuffs does not convert a Terry stop into a full arrest so as to require probable cause." Wright v. State, 766 N.E.2d 1223, 1233 (Ind. Ct. App. 2002) (citing United States v. Tilmon, 19 F.3d 1221, 1224-25 (7th Cir. 1994)). The evidence indicates that Douglas was only handcuffed for a short period of time, since he was not handcuffed when a second officer arrived at the scene to assist Officer Zotz.

of a search or seizure as turning on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005). Here, Officer Zotz reasonably observed what appeared to be a criminal act, that is, Douglas driving his car towards the security guard. When Officer Zotz approached Douglas to investigate, Officer Zotz immediately observed signs of Douglas' intoxication. We hold that Officer Zotz' investigatory stop of Douglas did not violate Article I, Section 11 of the Indiana Constitution. The trial court did not abuse its discretion when it admitted evidence of Douglas' intoxication obtained after a Terry stop.

Affirmed.

MAY, J., and MATHIAS, J., concur.